

ILLINOIS COMMERCE COMMISSION	)	
On Its Own Motion	)	
	)	
	)	Docket No. 01-0662
Investigation concerning Illinois Bell	)	
Telephone Company's compliance with	)	
Section 271 of the Telecommunications	)	
Act of 1996	)	

NOW COME the People of the State of Illinois, through the Attorney General of the State of Illinois, Lisa Madigan, and respond to the “Motion to Hold Issuance of Final Order in Abeyance and Conditional Request for Further Hearings” filed by McLeod USA Telecommunications Services, Inc. (“McLeod” or “Movant”). The People support McLeod’s motion and in support state as follows:

2. As Movants correctly point out, and as the People argued in their Initial Brief in

Phase I of this docket, Bell Operating Companies (BOCs) seeking long distance authority must demonstrate that their entry into the long distance market is in the public interest. People's Phase I Initial Brief, pp. 25-33. In view of this required showing, state commissions have regularly made separate determinations on whether specific applications under Section 271 are in the public interest.

3. In the instant docket, the People have cited Section 271 proceedings in Michigan, New Jersey and Texas, as well as in other states, in which state commissions recognized that the public interest test was independent of state determinations on checklist compliance. People's Phase I Initial Brief, pp. 26-31. Specifically, the People have already referred the Commission to the very decision cited by McLeod in its motion, Sprint v. FCC, 274 F.3d 549 (D.C. Cir. 2001), for its finding that allegations of "price squeeze" in local markets implicated public interest considerations and required remand. 274 F.3d 549, 555-56. People's Phase I Initial Brief at 26.

4. In Sprint v. FCC, the Court held that the term "public interest" in section 271 must be considered in light of the purposes of the Telecommunications Act of 1996, to open local and long distance telecommunications markets to competition. The Court held that the FCC must consider conditions that thwart that goal and retain monopoly dominance, such as the existence of facts that suggest or demonstrate a price squeeze. A "price squeeze" occurs when a firm with monopoly control over an input is "charging prices for inputs that preclude competition from firms relying on those inputs." 274 F.3d 549 at 553. SB 885 includes language that would exempt SBC from meeting imputation requirements for, "unbundled network element rates set in accordance with the provisions of this

Section” and may therefore create the potential for a price squeeze by raising the price of inputs that SBC controls (UNE’s), and by exempting these prices from the “price squeeze” protections contained in the imputation provisions of the Public Utilities Act (“PUA”). 220 ILCS 5/13-505.1.

5. SBC’s own witness in the instant docket has acknowledged that the Illinois commission’s public interest analysis could consider “whether there are state-specific market structure conditions that would preclude a finding that the marketplace is open.” People’s Initial Brief, Phase I, p. 32, citing AI Ex. 15.0 at 11. The People agree with McLeodUSA that if SB 885, including House Amendment 1, passes the General Assembly and is signed into law, the Commission should consider the effect of the law on Illinois-specific market conditions and structure. Under Sprint v. FCC, the FCC will be obligated to consider this issue when SBCI files its section 271 application. Given the state commission’s role in advising the FCC, the Commission should look at this issue now, and include its analysis in its recommendation to the FCC.

6. Moreover, the FCC itself, in its review of Ameritech’s Section 271 application for Michigan, ordered that more than unsupported assurances of local market opening were needed before SBC could enter the long-distance market in that state. According to the FCC, a BOC is not entitled to offer in-region long distance services “until the [FCC] is satisfied on the basis of an adequate factual record that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition.” People’s Initial Brief at 27, citing In the Matter of Ameritech Michigan, 12 FCC Rcd 20,543 at para. 386 (emphasis added). Should SB 885 become

law, therefore, the Commission must consider evidence and create a factual record on both the immediate and long-term market effects of SB 885 in order to make its recommendation on SBC's application for long-distance service in Illinois to the FCC.

WHEREFORE, the People support McLeod's motion and ask that the Commission hold the issuance of a Final Order in this docket, until it is determined whether SB 885 will be enacted, and if so, hold further evidentiary hearings in the instant docket prior to the issuance of a Final Order on the effect of any "price squeeze" in the local exchange market and its impact on the public interest as part of the recommendations to be made by this Commission to the FCC regarding SBC's application for long-distance authority in Illinois.

Respectfully submitted,  
THE PEOPLE OF THE STATE OF ILLINOIS  
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